

EX PARTE MOTION Re: United States v. Wolfe Margolies 19cr178(KMW)

19-cr-178 (KMW); related case 22-cv-3489 (KMW)

COMES NOW the Defendant, appearing pro se, and moves this Honorable Court ex parte to authorize an expert pathologist and/or toxicologist to *obtain* the Toxicology Report of the decedent whose death triggered application of Guidelines § 2D1.1(a)(2) – which underlies this ineffective assistance of counsel claim – and to review the Toxicology Report in conjunction with the Autopsy Report, law enforcement affidavits in Defendant's case, and any police reports surrounding the death, and to *prepare a written expert opinion* as to whether or not Defendant's sale of heroin to the decedent approximately 20 hours before his death was or was not a "but-for" cause of death, which is required under Burrage v. United States, 571 U.S. 204 (2014).

Defendant's trial counsel's representation was deficient because, *knowing the death occurred long after Defendant's conduct*, it fell below an objective standard of reasonableness to investigate causality – whether for example the Toxicology Report indicated that the decedent ingested other drugs in the 20-hour gap, such as fentanyl or alcohol or sleeping pills not supplied by Defendant, that negated "but-for" causation – so that counsel might properly and knowingly advise the Defendant whether to accept or reject the Government's plea offer that stipulated to a Guidelines enhancement from level 12 for distribution of less than 10 grams of heroin (§ 2D1.1(a)(14)) to level 38 for distribution with a resulting death (§ 2D1.1(a)(2)).

An expert opinion that evidence was insufficient to establish by a preponderance that Defendant's conduct was the proximate or "but-for" cause of the death would constitute objective evidence in support of Defendant's claim of deficient performance. It would also support Defendant's claim that counsel's deficient performance caused him prejudice, *that had counsel informed him that he could plead guilty to the indictment instead of the plea offer stipulating to level 38*, there is a "reasonable probability the result of the sentencing would have been different" as he would have pleaded guilty to the indictment and offered the report into evidence at any sentencing hearing to override the Government's unsubstantiated claim that the death enhancement should apply. (The Government never obtained the Toxicology Report, according to the attached Government e-mail to my appellate lawyer.) Then, the Guidelines range would have been much lower: the adjusted total offense level for the narcotics and pornography counts combined without the "death resulting" enhancement would have been level 25 and, at Criminal History Category I, the corresponding sentencing range would have been 57 to 71 months. This Court sentenced Defendant at the bottom of the sentencing range it calculated with the death enhancement (168 months), suggesting that it would have imposed a lower sentence had Defendant pled guilty to the indictment without the death enhancement and the PSR properly calculated his range as 57-71 months.

Defendant also respectfully requests that the time to file a response to the Government's July 1, 2022 answer, be extended to 60 days *after* a decision on the instant motion authorizing an expert, to allow the expert time to obtain and review documents, and write a report, upon which Defendant can rely in filing his response; or in the event the instant motion is denied, that the time to respond be extended to 30 days after Defendant receives a copy of that Court order.

WHEREFORE, Defendant moves this Honorable Court ex parte to authorize Defendant to engage an expert, whom Defendant's CJA appellate attorney has recommended from this Court's CJA expert list, to be paid through the CJA system as Defendant is indigent and previously provided a financial affidavit to that effect.



**From:** [Bracewell, Mollie \(USANYS\)](#)  
**To:** [Alessandra DeBlasio](#)  
**Cc:** [Bagliebter, Jamie \(USANYS\)](#); [Shin, Won \(USANYS\)](#); [Maurice Sercarz](#)  
**Subject:** Re: U.S. v. Margolies, 19-cr-178 (appeal 20-60)  
**Date:** Monday, August 17, 2020 3:03:54 PM

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Hi Alessandra,

Thanks for your email, and hope you are also well. We should be able to have the discs re-burned and mailed to you. Where should we mail them? I believe the production includes the death certificate but I don't believe we ever obtained a toxicology report. I will double check and let you know.

Thanks,  
Mollie

Mollie Bracewell  
Assistant U.S. Attorney

On Aug 16, 2020, at 11:21 AM, Alessandra DeBlasio <[ad@adeblasiolaw.com](mailto:ad@adeblasiolaw.com)> wrote:

Dear Mollie and Jamie,

First, Mollie congratulations!, and welcome back from maternity leave, and hoping all went perfectly despite these extraordinary circumstances.

I write now, having received all of the Mag Ct and Dist Ct transcripts, to request copies of the discovery your office provided in the *Margolies* case (19-cr-178).

I am hoping that this is not too burdensome, that it doesn't require someone rummaging around your office, but is available electronically and easily forwarded to me (or mail-able by disc, and preferably to my home).

I also wonder if a toxicology report was ever generated and if your office ever obtained it? If so, I would like to see a copy of it.

Wishing you all well these days, particularly as we return back to school/work in September.

Best,

Alessandra DeBlasio

2d Cir. CJA counsel for Wolfe Margolies

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**From:** Bracewell, Mollie (USANYS) [<mailto:Mary.Bracewell@usdoj.gov>]

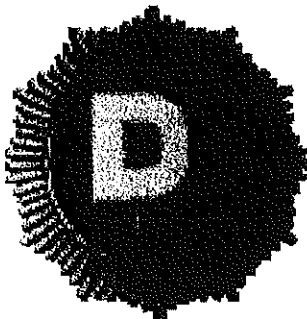
**Sent:** Tuesday, February 25, 2020 12:11 PM

**To:** Alessandra DeBlasio <[ad@adeblasiolaw.com](mailto:ad@adeblasiolaw.com)>

**Subject:** Automatic reply: Request for Statement of Reasons: U.S. v. Margolies, 19-cr-178

Thank you for your email. I'm out of the office on maternity leave until May.

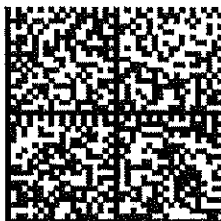
Please contact the other AUSA on the case, or AUSA Jamie Bagliebter at 212-637-2236.



This Cover Page can be Scanned into an ECMS Scanner or Faxed to 646-610-6900.

**Case Command :740 - NARCOTICS BOROUGH BROOKLYN  
SOUTH**

Case Number :2018-0023  
Tracking Number :43074651



<http://ecms.nypd.org/ecms/reports/cover sheet.jsp?sysDd5Num=43074651&sysCaseNum=...> 5/10/2018

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DATE FILED THE CITY OF NEW YORK - DEPARTMENT OF HEALTH AND MENTAL HYGIENE

NEW YORK CITY  
DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE  
FEBRUARY 08, 2018 11:47 AM

## CERTIFICATE OF DEATH

Certificate No. 156-18-006356

☐ New  
☒ Amend  
☐ ReplacementDOHMH  
USE ONLY

THIS CERTIFICATE NOT VALID UNLESS FILED IN THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE

1. DECEDENT'S LEGAL NAME (First, Middle, Last)		2a. New York City		2b. Type of Place		4. Hospice care in last 30 days		29. Name of hospital or other facility (if not facility, street address)	
Brooklyn		1. Hospital Inpatient		5. Hospice Facility		1. Yes		Brooklyn, New York 11232	
Date and Time of Death or Found Dead		3a. (Month) February		3b. (Day) 03		3c. (Year-YYYY) 2018		5. OCME Case No. K18003385	
6. Cause of Death		7a. Injury Date (mm dd yyyy)		7b. Time		7c. At Work		7d. Place of Injury - At home, factory, street, etc.	
Acute Heroin Intoxication		Unknown		Unknown		1. Yes		Residence	
7e. How Injury Occurred		7f. Location		7g. Place of Injury - At home, factory, street, etc.		7h. Location		Brooklyn, New York 11232	
8. Manner of Death		9. Autopsy		10. On the basis of examination and/or investigation, in my opinion, death occurred due to the causes and manner as stated.		11. Social Security No.		12. Inmate City Link?	
1. Natural		1. Yes		Certifier Signature Gene Maya		14052		1. M Yes 2. No	
2. Accidental		2. No		Certifier Name (Print) Gene Maya		14052			
3. Suicide		3. No		Certifier Title (Medical Investigator) (Deputy Chief) (Chief) (Medical Examiner)		14052			
4. Undetermined		4. No		11a. Usual Residence State		11b. County		11c. City or Town	
				New York		Erie		East Aurora	
				12. Date of Birth (Month) August		12. Day 23		12. Year-YYYY 1989	
				13. Age at last birthday (years) 28		14. Social Security No.		15. Inmate City Link?	
				15a. Usual Occupation (Type of work done during most of working life)		15b. Kind of business or industry		16. Social Security No.	
				Computer Programmer		Online Retail		14052	
				17. Birthplace (City & State or Foreign Country)		18. Education (Check the box that best describes the highest degree or level of school completed at the time of death)		19. Surviving Spouse's Partner's Name (if wife, name prior to first marriage; First, Middle, Last)	
				Buffalo, New York		1. High school graduate or GED		20. Mother's Maiden Name (Print) (Last, First, Middle)	
				21. Ever in U.S. Armed Forces? 1. Yes 2. No		22. Marital/Partnership Status at time of death		23. Address (Street and Number)	
				2. Married 3. Domestic Partnership 4. Divorced 5. Widowed 6. Unknown		24. Relationship to Decedent		East Aurora, New York	
				25. Method of Disposition		26. Place of Disposition (Name of cemetery, crematory, other place)		14052	
				1. Burial 2. Cremation 3. Entombment 4. City Cemetery		Forest Lawn Crematory			
				25c. Location of Disposition (City & State or Foreign Country)		25d. Date of Disposition		25e. Address (Street and Number)	
				Buffalo, New York		mm dd yyyy 02 12 2018		City & State ZIP Code	
				26a. Funeral Establishment		26b. Address (Street and Number)		City & State ZIP Code	
				International Funeral Service of New York, Inc.		4123 4th Avenue, Brooklyn, New York 11232			

THE CITY OF NEW YORK - DEPARTMENT OF HEALTH AND MENTAL HYGIENE

## MEDICAL EXAMINER'S SUPPLEMENTARY REPORT

Certificate No. 156-18-006356

VR 16 (Rev. 01/09)

27. Ancestry (Check one box and specify)		28. Race as defined by the U.S. Census (Check one or more to indicate what the decedent considered himself or herself to be)		29a. If Female		29b. If pregnant within one year of death, outcome of pregnancy		29c. Date of Outcome	
1. Hispanic (Mexican, Puerto Rican, Cuban, Dominican, etc.)		1. White		1. Not pregnant within 1 year of death		1. Live Birth		mm dd yyyy	
2. Specify Unknown		2. Black or African American		2. Pregnant at time of death		2. Spontaneous Termination / Ectopic Pregnancy			
3. NOT Hispanic (Italian, African American, Haitian, Polish, Ukrainian, Nigerian, Taiwanese, etc.)		3. American Indian or Alaska Native (Name of enrolled or principal tribe)		3. Not pregnant at death, but pregnant within 42 days of death		3. Induced Termination		4. None	
4. Specify Unknown		4. Asian Indian		4. Unknown if pregnant within 1 year of death		4. None			
		5. Filipino		30. Did tobacco use contribute to death?		31. For Infant under one year: Name and address of hospital or other place of birth			
		6. Korean		1. Yes 2. No 3. Probably 4. Unknown					
		7. Japanese							
		8. Vietnamese							
		9. Other Asian-Specific							
		10. Native Hawaiian							
		11. Samoan							
		12. Guamanian or Chamorro							
		13. Other Pacific Islander-Specific							
		14. Other-Specific							

Cleared For Cremation  
If Family Requests

I certify that I personally examined the body on

(Date) at (Location)

SIGNATURE: (Medical Investigator) (Deputy Chief) (Chief) (Medical Examiner)

I did not personally examine the body after death.

SIGNATURE: Gene Maya (Deputy Chief) (Chief) (Medical Examiner)

System Case Id 18356170

Gene Maya  
M.E. Signature

USAO\_000228

Wolfe Margolies 37756-039  
FCI Danbury  
Route 37  
Danbury, CT 06811

WESTCHESTER NY 105

7 JUL 2022 PM 2 L

The Honorable Barbara Moses  
U.S. Magistrate Judge  
U.S. Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Legal Mail

10007-1312SS

Legal Mail

FEDERAL CORRECTIONAL INSTITUTION DANBURY  
33 1/2 PEMBROKE ROAD, DANBURY CT, 06811

DATE:

7-20-22  
THE ENCLOSED LETTER WAS PROCESSED THROUGH  
SPECIAL MAIL PROCEDURES FOR FORWARDING TO YOU.  
THE LETTER HAS BEEN NEITHER OPENED NOR INSPECTED.  
IF THE LETTER RAISES A QUESTION OR PROBLEM OVER  
YOUR FACILITY HAS JURISDICTION, YOU  
MAY RETURN THE MATERIAL FOR FURTHER  
CLARIFICATION. IF THE WRITER  
REQUESTS CLARIFICATION, PLEASE RETURN  
YOUR RESPONSE. PLEASE RETURN  
YOUR RESPONSE TO THE ABOVE ADDRESS.

